IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3324 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

B R SHARMA

Versus

UNION OF INDIA

---

Appearance:

MR JR NANAVATI for Petitioner No. 1

MR UI VYAS for Respondents No. 1,2

---

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 18/10/2001

ORAL JUDGEMENT

The present petition is filed for the reliefs that the writ, order or direction in the nature of certiorari quashing and setting aside the gradation list dated 26.2.1986 and also letter No.G.II/006/ Estt./I dated 4.3.1986 issued by the respondents insofar as it does not properly determine the seniority of the

petitioner. It is also prayed that necessary directions be issued to the respondents to fix the seniority of the petitioner after taking into account the length of service of the petitioner as Emergency Commissioned Officer in the Army and regulate the promotion of the petitioner in the post of Dy. S.P. and Assistant Commandant accordingly.

2. The facts giving rise to the present petition are that the petitioner was commissioned in the Army as Emergency Commissioned Officer on 27.9.1963. Thereafter, Central Government started releasing the Emergency Commissioned Officers in a phased programme and the petitioner came to be released with effect from 1.10.1967. The petitioner served in the Army for four years and four days. As a measure of rehabilitating the Emergency Commissioned Officer, it was decided to recruit the released Emergency Commissioned Officers in the Border Security Force (BSF) and other para military forces. The petitioner applied for appointment in BSF as Deputy Supdt. of Police. The application of the petitioner was forwarded by the Commanding Officer of 38 Medium Regiment 99 APO by his letter no.1047/2 dated 14.1.1967 to the Director General of BSF.

3. It is the case of the petitioner that the Director General of BSF did not issue any interview call till June 1967. A reminder was issued by the Commanding Officer 38 Medium Regiment by his letter No.1047/ 2/67 dated 29.6.1967. In spite of the reminder no interview call was received. The petitioner was released on 1.10.1967. The petitioner after release from the Army, joined as Inspector (Subedar) in CRPF on 12.7.1969. He was promoted to the post of Dy. S.P. in CRPF on 27.4.1972. It is the case of the petitioner that he was entitled to promotion to the post of Assistant Commandant in 1973, but was promoted to the said post on 3.8.1983. The grievance of the petitioner is that his service as Commissioned Officer was required to be included while determining eligibility for promotion to the post of Assistant Commandant having regard to the provisions contained in clause (b) of Rule 8 read with Rule 105 of the Central Reserve Police Force Rules, 1955. The contention of the petitioner is that the benefit of inclusion of service as Commissioned Officer was denied to the petitioner on the ground that the petitioner was not an Army Officer at the relevant time as the petitioner on his release from Emergency Commissioned Service joined as Inspector (Subedar) in CRPF, i.e. an inferior post. Therefore, for the purpose of promotion to the post of Assistant Commandant from the post of Dy.

S.P. the petitioner was not entitled to inclusion of his commissioned service for the purpose of determining the seniority in the CRPF.

4. The petitioner has given details of certain writ petitions being filed, viz. Nos.44 of 1975, 1048 of 1976, 1775 of 1976 and 347 of 19777 in the Delhi High Court by some Emergency Commissioned Officers inter alia contending therein that said petitioners were Emergency Commissioned Officers in the Army and after their release from the Army they were appointed in CRPF and that they were denied the benefit of Army service in counting the seniority in the CRPF and that action of the respondents was illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. The Delhi High Court held that the petitioners who were Emergency Commissioned Officers were not Army Officers even while serving in the Army as Emergency Commissioned Officers. Therefore, they do not fall within the category of 'Army Officer' within the meaning of Rule 8 of the said Rules. On the aforesaid ground and others which are not relevant for the purpose of the present Special Civil Application, the above petitions were dismissed by the Delhi High Court. It is also set out by the petitioner that being aggrieved of the same a Civil Appeal was filed in the Supreme Court of India under Article 136 of the Constitution of India which was heard by the Supreme Court on December 5, 1984 and the Supreme court passed an order which reads as under:

> "The entire basis of the judgement of the High Court is that the appellants were not 'Army Officers'. It is now agreed by all parties that they were 'Army Officers'. In view of this we think that it is fit case to be remanded to the High Court for fresh decision of the issues involved on the basis that appellants were 'Army Officers'. The judgement of the High Court is set aside. the High Court may dispose of the matter within three months from today. The Govt. of India may file fresh affidavit explaining the position. The parties are also at liberty to file such supplementary affidavits as they may think fit. If any promotion is made during the pendency of the case, it will be subject to the result of writ petition in the High Court. The appeal is disposed of with this direction. No costs."

5. The petitioner has set out in para 7 of the petition that after hearing the matters again, the Delhi

High Court allowed the petitions and held that the Emergency Commissioned Officers were entitled to the benefit of their past service and directed that the seniority rule to be applied appropriately. It is also stated by the petition that the matter was carried in appeal before the Supreme Court of India and the appeal was dismissed by an order which reads as under:

> "We have heard learned counsel Shri K.K. Venugopal for petitioners, learned counsel Shri Rao for union of India and learned counsel Shri F.S. Nariman for the respondents. We are satisfied that the respondents are Army Officers within the meaning of Rule 8 of CRPF Rules 1955 and they are entitled to add their entire length of unbroken service as ECOs and SSCOs to reckon towards seniority. SLPs are accordingly dismissed."

6. The case of the petitioner is that the respondents have revised earlier seniority list and issued fresh provisional gradation list on 26.2.1986 in order to comply with the judgement of the Delhi High Court in Special Civil Application No.44 of 1975, which was confirmed by the Supreme Court of India by its order dated 21.1.1986.

7. The petitioner made a representation to respondent no.2 on 21.3.1985 stating that he should be given proper place in the gradation list by including his commissioned service. Said representation was rejected by the Assistant Director by letter dated 30.6.1985. It is the case of the petitioner that the decision conveyed to the petitioner by a letter dated 30.6.1985 is contrary to the decision of the Govt. of India contained in letter dated 18.1.1984. According to the petitioner Govt. of India has held in its letter dated 18.1.1984 that the commissioned service in the case of the officers who were initially appointed as Subedars and later on as Deputy SPs in CRPF may be included for computing the eligibility for consideration for promotion to the post of Assistant Commandant. The petitioner once again made a representation on 20.9.1985 to respondent no.1 for assigning the seniority at a proper place in the gradation list. Setting out the details of the case of one Shri A.N. Tripathi and two others in whose case the Govt. of India conveyed its decision to respondent no.2 on 17.1.1983 wherein it has been stated that the commissioned service in the case of Emergency Commissioned Officers who were released from Army were initially appointed as Inspectors (Subedars) and later on

promoted as Dy SP in CRPF are entitled to have their Army service included for the purpose of determining the eligibility for promotion to the post of Assistant Commandant. The petitioner also cited the case of Shri Gaj Singh Yadav and Shri V.P. Sarin who according to the petitioner on release from Army joined as Inspectors in the CRPF, were granted promotion as Dy. SP and their eligibility was determined by including their Army service under Rule 8(b) read with Rule 105 of the said Rules. In short, the case of the petitioner is that if his four years Army Commissioned Service was included for the purpose of determining his seniority, he would have been eligible for the post of Assistant Commandant in the year 1973 itself and his case ought to have been considered by the Departmental Promotion Committee in 1973 and onwards and having regard to his service record he would have been promoted in 1973 itself. It is also the grievance of the petitioner that his juniors have been promoted ignoring his aforesaid service. In the provisional gradation list issued on 26.2.1986 the petitioner is assigned seniority at serial no.540. Said seniority is determined by the respondent ignoring the service as Commissioned Officer to which the petitioner was entitled under clause (b) of Rule 8 read with Rule 105 of the Rules. According to the petitioner if his Army Commissioned Service is included the petitioner would be below Rajinder Singh (serial no.237) and above Daljit Singh (serial no.238).

8. For ready reference Rule 8(b)(i) is reproduced hereunder:

"8. Seniority:
(a) .. ..
(b) The inter se seniority of superior officers shall be determined as under:

(i) An Army Officer shall maintain his seniority as between Army Officers within a particular rank. Similarly, an Indian Police Service Officer shall maintain his seniority between himself and other Indian Police Service Officers. For purposes of inter se seniority between non Army and Army Officers of equivalent rank, substantive incumbents shall be senior to officiating or temporary officers, their inter se seniority depending on the dates of their continued unbroken service in that rank. Similarly, the inter se seniority officiating or temporary officers shall be determined by their continuous length of service in that rank. An

Army Officer reemployed in the Central Reserve Police Force shall maintain his Army seniority between Army Officers within a particular rank."

Rule 105 (3A) (iii) (b) reads as under:

"105. Appointment and promotion of superior officers:

.. .. ..

(3A) The posts of Assistant Commandants (Second in Command or Adjutant or Junior Staff Officer or Vice Principal, Central Training College) in Battalions other than Signals Battalions shall be filled:

(ii) by promotion:

.. .. ..

(b) from amongst Deputy Superintendents of Police from State and Company Commanders or Quarter Masters or Assistant Principal, Central Training College from the Central Reserve Police Force (other than Indian Police Service Officers) who have completed five years of Gazetted or Commissioned Service and have served in the Force for a minimum period of two years:

Provided that the minimum period of two years specified in this subclause shall not be necessary in the case of Company Commanders, Quarter Masters and Assistant Principal Central Training College, from the Central Reserve Police Force, who have been promoted to the rank of Major in the Army or as the case may be to the rank of Superintendent of Police or any equivalent post in the State."

9. Learned advocate Mr.Nanavati submitted that in view of this clear provision of Rule 8(b) (i) read with Rule 105 is (3A)(iii)(b) the petitioner is required to be granted reliefs as prayed for. Mr.Uday Vyas, learned advocate appearing for the respondents submitted that an affidavit in reply is filed on behalf of the respondents by one Shri B.L. Vohra, Deputy Inspector General of Police CRPF, New Delhi wherein the contentions raised by the petitioner are dealt with in detail. Mr. Vyas invited attention of the Court to the contents of para 3 of the affidavit in reply wherein relevant portion reads

as under:

"3. .. .. I further say and submit that according to these Rules released ECOs were appointed to the posts of Dy SP in Central Police Organisation including the CRPF. For the selection of the candidates (released ECOs) to the post of Dy. SP in CPOs including CRPF, a Special Selection Board was constituted by the MHA under the Chairmanship of DG, BSF for the selection. .. .. .. .. .. ..

.. .. .. .. .. ..

Since the petitioner was not sponsored by the DG, BSF to the CRPF for appointment as Dy. SP the question of his appointment as Dy SP in CRPF did not arise. Moreover simply sending an interview call would not have made him eligible for the post. He would have to qualify in the interview for the post."

Mr.Vyas submitted that para 4 of the affidavit in reply is also relevant while considering the contentions raised by the petitioner. He submitted that the contentions in para 4 of the petition are not true and in fact the factual position is as under :

"4. .. .. .. .. ..

I say and submit that some of the released ECOs did not make the grade for the appointment as Dy SP in the CPOs including CRPF before the Special Selection Board constituted under the DG BSF and they were offered to join the post of Inspector (a non gazetted post). The petitioner had accepted to join the said post of Inspector. i say and submit that having accepted and joined the post of Inspector (a non gazetted post) he was letter considered for promotion to the post of Dy SP as per the Rules applicable and was promoted as Dy SP with effect from 8.5.1972. thus, for the purpose of his promotion to the post of Dy SP he was a local promotee officer for all purposes. As per his position in the rank of Dy SP and on availability of vacancies in the higher rank of Asstt. Commandant, he was finally promoted in the year 1983 to the rank of Assistant Commandant with effect from 3.8.1983. His contention that he was eligible for promotion to the post of Assistant Commandant in 1973 is not tenable. Since eligibility alones is not the only criteria for promotion but there must be vacancies to accommodate eligible officers on

promotion."

10. Mr.Vyas also submitted that the case of the petitioner was considered as per the decision of the Ministry of Home Affairs and it was found that the petitioner was not in the zone of consideration for promotion as Assistant Commandant with reference to the DPCs held earlier. Therefore, he could not be promoted prior to 1983. Mr.Vyas also submitted that promotion to higher rank does not merely depend upon the basis of completed years of service or eligibility for promotion but it depends on availability of vacancies in the higher post and placement of the name of a particular officer in the zone of consideration for promotion by DPC calculated on the basis of number of vacancies to be filled. Mr.Vyas further submitted that the petitioner was intimated about the same by DTE (General) CRPF, New Delhi by letter No.P VII.5/ 82 Estt dated 17.1.1983 and in spite of that the petitioner tried to raise and issue of counting EC service, i.e. 27.9.1963 to 1.10.1967 for seniority and promotion in the rank of Dy SP which is totally irrelevant.

11. Mr.Vyas, learned advocate submitted that so far as the contentions regarding Shri Gaj Singh Yadav, the same are replied in para 10 of the affidavit in reply. The facts of both these cases are set out and the contentions raised by the petitioner in that regard are not true. Mr.Vyas submitted that so far as the contention regarding some officers having break of 1 to 5 years and still getting the benefit of their Armed Service while determining the seniority in the provisional gradation list issued on 26.2.1986 is concerned the same is not replied in particular but those cases can be considered only if the facts of the case are provided. He submitted that the case of the petitioner cannot be said to be akin to the facts of those cases in absence of details of those cases. Mr.Vyas strenuously submitted that in the present case the facts are that the petitioner was not selected and appointed as Dy. S.P. by the Special Selection Board which consisted of DG, BSF. Only those candidates who were selected by the Special Selection Board were offered to join the post of Dy.SP. He submitted that the petitioner himself accepted to join the post of Inspector (a non gazetted post) and therefore, under Rule 8(b) read with Rule 105 the petitioner is not entitled for the benefit prayed for. Mr.Vyas submitted that as per Rule 8(b)(i) of the Rules an Army Officer shall maintain his seniority as between Army Officers within a particular rank. He submitted that in case of the petitioner, the petitioner accepted

to join as Inspector, a non gazetted post and therefore, he is not entitled to get the benefit of Rule 8(b)(i). He submitted that Rule 105 (3A) (iii) (b) provides that the Deputy Superintendents of Police from State and Company Commanders or Quarter Masters or Assistant Principal, Central Training College from the Central Reserve Police Force (other than Indian Police Service Officers) who have completed five years of Gazetted or Commissioned Service and have served in the Force for a minimum period of two years are eligible for being considered to the post of Assistant Commandants. He submitted that the petitioner was promoted to the post of Dy.SP in CRPF on 27.4.1972 and therefore, in view of the relevant portion of Rule 105 he became eligible for being considered to the post of Assistant Commandant only on completion of five years of gazetted or commissioned service. In the case of the petitioner, earlier he was an Inspector since 12.7.1969, a non gazetted post and it was only after 27.4.1972 when he was promoted as Dy SP five year period is counted. Thus, there is no question of his being eligible in 1973.

12. Mr.Vyas, learned advocate appearing for the respondents submitted that the contentions of the petitioner are misplaced inasmuch as the petitioner was not appointed as Dy SP in CRPF by the Special Selection Board and therefore, he stood at par with other officers of CRPF on the basis of his appointment as Inspector (Subedar) in CRPF. On 12.7.1969 he could not have been at par with other officers who were directly appointed Dy SP for getting the benefit of EC service for seniority as he got promotion to the post of Dy SP in CRPF on 27.4.1972. The petitioner was given option to join the post of Inspector (a non gazetted post) which he willingly joined. Having joined the same he has to wait for his turn for earning promotion.

13. The Court is in agreement with the submissions made by Mr.Vyas and in view of the provisions of Rule 8(b)(i) and Rule 105 (3a)(iii)(b) of the Central Reserve Police Force Rules, 1955, the petitioner fails to make out any case.

14. In the result no case is made out. The petition fails. Rule is discharged with no order as to costs. Ad interim relief granted earlier stands vacated.

(Ravi R. Tripathi, J.)

karim